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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF GENERAL COUNSEL

In the Matter of)
)
Market Entry and Regulation of) IB Docket No. 95-22
Foreign-affiliated Entities) RM-8355
) RM-8392

**COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association
("CTIA")¹ hereby submits its comments on the Notice of Proposed
Rule Making in the above-captioned proceeding.²

BACKGROUND

In the Notice, the Commission proposes several new policies
and rules to increase competition in the U.S. telecommunications
market and to encourage foreign governments to open their
communications markets to U.S. industry.³ Specifically, the
Commission proposes several amendments to Sections 214 and

¹ CTIA is the international organization of the wireless
communications industry for both wireless carriers and
manufacturers. Membership in the association covers all
Commercial Mobile Radio Service providers, including cellular,
personal communications services, enhanced specialized mobile
radio, and mobile satellite services.

² *In the Matter of Market Entry and Regulation of
Foreign-affiliated Entities*, IB Docket No. 95-22, FCC 95-53,
(released February 17, 1995) ("Notice").

³ Notice, ¶ 1.

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310(b)(4) of the Communications Act⁴ which govern the participation of foreign entities in the U.S. telecommunications market.⁵

In the *Notice*, the Commission asks whether it should consider "effective market access" as part of its Section 310(b)(4) public interest analysis when a foreign entity seeks to acquire or increase its indirect ownership interest above the 25 percent statutory benchmark in a U.S. licensee.⁶ The proposed definition of "effective market access" under Section 310(b)(4) is the ability for U.S. entities, either currently or in the near future, to provide the same or similar telecommunications services in the foreign entity's primary market.⁷ The Commission proposes that while its finding of effective market access is critical, such a finding is not dispositive in its determination

⁴ See 47 U.S.C. §§ 214 and 310(b)(4) (1994).

⁵ Section 214 governs the Commission's review of applications by foreign carriers seeking facilities-based entry into the U.S. market. This section generally applies to the wireline industry. Section 310(b)(4) limits foreign ownership and voting interests in a corporation, which directly or indirectly controls a U.S. common carrier radio licensee, to 25 percent of the parent corporation's capital stock. Although Section 310(b)(4) precludes a foreign entity from holding an officer's position in the parent corporation, it permits a limited number (up to 25 percent) of foreign directors in the parent corporation. CTIA's comments in this proceeding will focus on the Commission's proposals concerning Section 310(b)(4).

⁶ *Notice*, ¶ 95.

⁷ *Notice*, ¶¶ 95, 96.

to license a particular entity.⁸ The Commission seeks comment on whether it should also consider other factors such as:

1. The state of liberalization in the foreign country's entry into the U.S. market;
2. National security; and
3. The competitiveness of the applicant's target market in the United States.⁹

DISCUSSION

CTIA supports the Commission's proposed new policies which seek to promote competition in the telecommunications global market and to encourage foreign governments to open their communications markets to U.S. entities. Too often, U.S. wireless carriers encounter foreign ownership restrictions that are based upon the reciprocal application of the limits on foreign investment set forth in the Communications Act. In many instances, foreign countries use the restrictive ownership provisions contained in Section 310(b) of the Communications Act as a basis for limiting U.S. investment or denying entry in a foreign country's wireless markets. CTIA commends the Commission for: 1) recognizing that U.S. limits on foreign investment in U.S. licensees is a barrier for U.S. telecommunications companies seeking competitive opportunities abroad, and 2) proposing new

⁸ Notice, ¶ 96.

⁹ Notice, ¶ 96.

policies that will facilitate the entry of U.S. wireless carriers into foreign communications markets while at the same time providing increased competition in the U.S. telecommunications market.

The Commission has proposed several factors for determining "effective market access" under Section 214.¹⁰ However, it is unclear from the Notice whether the Commission will consider similar factors in determining "effective market access" under Section 310(b)(4). While CTIA generally supports the establishment of an "effective market access" standard as part of its Section 310(b)(4) public interest analysis, the Commission should avoid establishing factors that are difficult to implement and which impose significant administrative burdens upon the foreign entity and the Commission. While well meaning, U.S. administrative requirements can be viewed as a way to severely

¹⁰ In its proposed standard of "effective market access" under Section 214, the Commission proposes six factors for determining whether effective market access exists: 1) whether U.S. carriers can offer in the foreign country international facilities-based services substantially similar to those the foreign carrier seeks to offer in the United States; 2) whether competitive safeguards exist in the foreign country to protect against anticompetitive and discriminatory practices, including cost allocation rules to prevent cross-subsidization; 3) the availability of published, nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carriers' facilities for termination and origination of international services; 4) timely and non-discriminatory disclosure of technical information needed to use or interconnect with carriers' facilities; 5) the protection of carrier and customer proprietary information; and 6) whether an independent regulatory body with fair and transparent procedures is established to enforce competitive safeguards. See Notice, ¶ 40.

limit or bar foreign entities' access to the U.S. telecommunications market. The unintended consequence of such action is the imposition of equally burdensome reciprocal requirements upon U.S. entities, thereby restricting or denying U.S. carriers' access into the foreign country's communications markets.

The Commission's proposed "effective market access" standard for Section 310(b)(4) focuses on the foreign entity's primary markets. While the Commission does not define the scope of a foreign entity's primary market under Section 310(b)(4), the Commission has defined primary markets for purposes of Section 214 as one where a carrier has a significant facilities-based presence, i.e., those key markets where: 1) the carrier has a significant ownership entity that has a substantial or dominant market share of either the international or local termination telecommunications market of the country, and 2) traffic flows between the United States and that country are significant.¹¹ It is unclear from the Notice whether the Commission proposes to apply the Section 214 definition of the term "primary market" to Section 310(b)(4), or will apply some other definition.

CTIA supports a policy in which a foreign entity may own as much equity in a U.S. wireless telecommunications carrier as a U.S. entity is permitted to own in the foreign carrier's home market. CTIA recommends that the Commission establish a specific

¹¹ Notice, ¶¶ 40, 43.

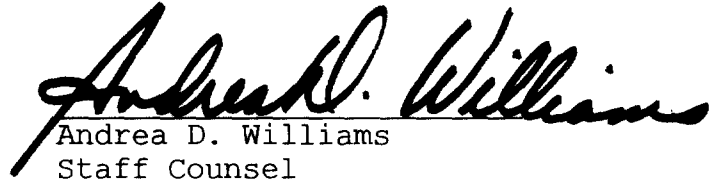
definition of "primary market" as it relates to application of the "effective market access" standard under Section 310(b)(4). The Commission should develop a definition that reflects the Commission's goals to increase competition in the U.S. telecommunications market and to open foreign telecommunications markets to U.S. industry. The Commission must provide a definition of "primary market" that does not have the unintended result of creating an environment whereby foreign governments impose a reciprocal definition of primary market which will severely limit or bar entry into foreign communications markets, particularly for those U.S. entities with diversified telecommunications holdings.

CONCLUSION

For the foregoing reasons, CTIA supports the Commission's overall policies to increase competition in the U.S. telecommunications industry and to open foreign communications markets to U.S. industry. CTIA also supports the general principle of "effective market access" as part of the Section 310(b)(4) public interest analysis interest. However, the Commission's development of a Section 310(b)(4) "effective market access" standard, including its definition of "primary markets," must reflect the Commission's overall policies in this proceeding. While CTIA recommends a distinct definition of "primary market" for Section 310(b)(4) purposes, CTIA urges the Commission to develop a definition which appropriately addresses

the issue of reciprocal application by a foreign government and whether such reciprocity would severely limit or foreclose U.S. wireless carriers from foreign communications markets.

Respectfully submitted,


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